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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 HENRY ZARAZU,

12 Petitioner,

13 v.

14 FRED FOULK, Warden,

15 Respondent.
16

Case No. CV 13-8769-DOC (KK)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended
18 Petition for a Writ of Habeas Corpus, the records on file, and the original and Final
19 Report and Recommendation of the United States Magistrate Judge. The Court has
20 engaged in a *de novo* review of those portions of the original Report to which
21 Petitioner has objected. The Court accepts the Final Report and Recommendation of
22 the Magistrate Judge.

23 In his Reply to Respondent's Answer, Petitioner also requests an evidentiary
24 hearing. However, in habeas proceedings, "an evidentiary hearing is not required on
25 issues that can be resolved by reference to the state court record." Totten v. Merkle,
26 137 F.3d 1172, 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d 1158, 1173
27 (9th Cir. 2005). "It is axiomatic that when issues can be resolved with reference to the
28 state court record, an evidentiary hearing becomes nothing more than a futile exercise."

1 Totten, 137 F.3d at 1176. Here, the Magistrate Judge concluded all of Petitioner's
2 claims could be resolved by reference to the state court record. Accordingly, the Court
3 denies Petitioner's request for an evidentiary hearing.

4 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the
5 Second Amended Petition for a Writ of Habeas Corpus; and (2) dismissing this action
6 with prejudice.

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8 Dated: March 9, 2015

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10 HONORABLE DAVID O. CARTER
11 UNITED STATES DISTRICT JUDGE
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